

**House Judiciary Committee
Immigration and Citizenship Subcommittee**

Why Don't They Just Get in Line? Barriers to Legal Immigration
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Prepared Testimony of
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Thank you, Chairwoman Lofgren, Ranking Member McClintock, and distinguished Members of the Subcommittee for the opportunity to testify on our nation's lawful immigration system and the impact it has on the wages and job opportunities for Americans.

This hearing is being held amidst an ongoing and worsening crisis at the Southern border, fueled by the Biden administration's decisions to limit application of Title 42 authority; end the Migrant Protection Protocols (MPP), or "Remain in Mexico" policy; and a policy of generally not enforcing our immigration laws in the interior. To have a properly functioning legal immigration system, a sovereign nation must enforce the laws on the books otherwise the rules become moot.

The United States is the greatest country in the world so it is unsurprising that billions of people from around the globe would relocate to America if they could. This presents a binary policy choice, either allow unlimited immigration or set annual numerical limits. Recognizing that unlimited immigration is not feasible, the key policy question is how many should we allow each year?

Congress, through the Immigration and Nationality Act (INA), has established various levels of permanent and temporary legal immigration per fiscal year. Numerical limits or caps are not barriers but are instead the rules under which our legal immigration system operates.

Because the American people are the true stakeholders in U.S. immigration policy, the system should not operate in a way that harms American workers. There is ample evidence that the current high levels of legal immigration, both permanent and temporary, negatively affect the wages and opportunities for certain Americans.¹ Those harmed tend to be marginalized workers, minorities and those with lower skills and education, who usually are the last into the workforce during economic booms and the first to be let go during economic downturns. As the American economy tries to recover from the government-mandated shutdowns to stop the spread of Covid-19, tighter labor markets are critical to ensuring that vulnerable American workers get back to work.

Sustained High Levels of Permanent Immigration Since 1965

The 1965 Immigration Act established the formula that is still applicable today for the annual worldwide levels of legal immigration. It is often said that our immigration system is "broken" without anyone ever defining what that means. Currently, the United States issues over 1 million green cards per year and over 43 million aliens have obtained lawful permanent resident (LPR) status since the 1965 Act.² Many of them have, or intend to, naturalize.

How do we get to over 1 million new green cards a year? Generally speaking, the INA establishes three avenues for an alien to become an LPR: family based, employment based, and visa lottery.³ Within the family-based and employment-based avenues, Congress established overall annual limits as well as preference allocations that further subdivide the total annual limits.⁴ The third avenue is the visa lottery whereby Congress allocates 50,000 visas per year that are randomly distributed to aliens from countries that have low levels of immigration in the United States.⁵

The formula for family-based immigration levels looks complicated in the statute, but in practice generally results in an annual level of 226,000 family-based green cards subject to numerical limitation.⁶ Congress allocates those 226,000 visas as follows:⁷

- First preference – Unmarried sons and daughters of U.S. citizens: 23,400
- Second preference – spouses and unmarried sons and daughters of LPRs: 114,200, with at least 77 percent of this allocation for spouses and children (under age 21) of LPRs
- Third preference – Married sons and daughters of U.S. citizens: 23,400
- Fourth preference – Brothers and sisters of U.S. citizens: 65,000

Immediate relatives of U.S. citizens are exempt from numerical limitation. The INA defines “immediate relatives” as children and spouses of a U.S. citizen as well as the parents provided the U.S. citizen is at least 21 years old.⁸ As a result, this category alone accounts for nearly 500,000 new LPRs every year.

The worldwide level of employment-based immigration is generally 140,000 per fiscal year.⁹ Congress allocates those 140,000 visas as follows:¹⁰

- First preference – Priority workers (aliens of extraordinary ability, outstanding professors and researchers, certain multinational executives and managers): 28.6 percent
- Second preference – Aliens with advanced degrees or exceptional ability: 28.6 percent
- Third preference – Skilled workers, professionals, and other workers: 28.6 percent
- Fourth preference – Certain special immigrants: 7.1 percent
- Fifth preference – Employment creation: 3.1 percent

Within the employment-based third preference category, “skilled workers” are defined as defined as immigrants performing non-temporary or seasonal labor that requires at least two years of training or experience; “professionals” hold baccalaureate degrees; and “other workers” are unskilled laborers.¹¹ Not more than 10,000 visas may be issued to “other workers”.¹² The employment-based fourth preference category is not really a work-based category but a catch-all of certain aliens defined in INA section 101(a)(27). Within the employment-based fifth preference category, also not really a work-based category, at least 3,000 visas are issued to immigrant investors who invest in a new commercial enterprise which creates employment in a targeted employment area.¹³

Another element of the 1965 Act was to replace the national origin-based system for distributing immigrant visas with one that generally limits the number of visas that nationals of a specific country can obtain in a given fiscal year to 7 percent of the cap. This so-call per country cap serves the important function of ensuring diversity in the immigrant population which prevents very large countries from capturing all of the green cards to the exclusion of the rest of the world and, thereby encouraging assimilation among new immigrants.

Mass Immigration Harms American Workers While Enriching Executives

With our predominantly family-based immigration system, only about 15 percent of green cards are awarded in a given fiscal year on the basis of merit. In practice, this means that today’s

immigrants are effectively selecting the next wave of immigrants and this process has repeated on autopilot since 1965. The result is that an overwhelming number of immigrants, including those who subsequently become naturalized U.S. citizens, are less educated and lower skilled than the general native-born American population.¹⁴ For example, Census Bureau data show that of adult immigrants (ages 25 to 65), 28 percent lack a high school diploma, compared to 8 percent of natives.¹⁵

And, more importantly, the immigrant population has skyrocketed. Since 1970, the number of immigrants in the United States has gone from 9.6 million in 1970 to 44.9 million in 2019—a nearly four and half fold increase. The immigrant share of the U.S. population has nearly tripled over this time period, from 4.7 percent to 13.7 percent.¹⁶ The 1986 amnesty of 3 million illegal aliens and the corresponding 1990 Immigration Act put immigration into overdrive.

The 1990 Act also established what became known as the Jordan Commission, after its chair former Congresswoman and Civil Rights icon Barbara Jordan. Among the Commission’s recommendations issued in 1997 shortly after Ms. Jordan’s passing, was to (1) better integrate immigrants currently in the country; (2) reduce legal immigration to about 550,000 per year; (3) tighten up and regulate temporary nonimmigrant worker programs; and (4) vigorously enforce immigration laws, i.e., no more amnesties.¹⁷ The Commission aptly summed up its work as follows: “The credibility of immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave.”¹⁸ Unfortunately, these recommendations were never put into effect.

The basic economics principle of supply and demand completes the analysis of the effects of high levels of immigration that the Jordan Commission warned about. The oversupply of workers at the bottom of the labor market reduces wages and job opportunities for Americans at that level. Specifically, the Americans who lose out due to mass immigration tend to be those without a college degree, including African Americans and other minorities, the young, and the disabled. As the National Academies of Sciences (NAS) found in its 2016 report entitled, *The Economic and Fiscal Consequences of Immigration*, “... the evidence suggests that groups comparable to the immigrants in terms of their skill may experience a wage reduction as a result of immigration-induced increases in labor supply” and that “[s]ome research also suggests that, among those with low skill levels, the negative effect on native’s wages may be larger for disadvantaged minorities and Hispanic high school dropouts with poor English skills.”¹⁹ The NAS study found that by increasing the labor supply, immigration could reduce the wages of workers by approximately \$500 billion while the owners of capital gain about \$550 billion.²⁰

On the other hand, lower wages translate to higher incomes for business executives and larger profits for corporations. The rich get richer, immigrants receive higher wages than they would for the same work in their home country, and lower skilled Americans disproportionately suffer. Put another way, mass low skilled immigration causes significant wealth transfer from blue collar Americans.

Myth of Jobs Americans Won't Do

A common refrain from businesses and proponents of high levels of immigration is that our country needs immigrants because there are supposedly jobs that Americans will not do. The data clearly refutes that and this flawed premise should be dispensed with, as Chairman Nadler himself said.²¹

Of the 474 unique occupations defined by the Department of Commerce, my colleagues at the Center discovered that just 6 occupations are majority immigrant and in these occupations Americans still account for 46 percent of workers.²² Additionally, these high-immigrant occupations only employ less than 1 percent of all native workers and 3 percent of all immigrant workers. Our labor market simply is not segmented into native jobs and immigrant jobs.

A closer look at the Department of Commerce data show that many occupations thought of being done by non-natives (both legal immigrants and illegal aliens) are in fact majority native-born. This includes:

- Maids and housekeepers: 51 percent native-born
- Taxi drivers and chauffeurs: 54 percent native-born
- Butchers and meat processors: 64 percent native-born
- Grounds maintenance workers: 66 percent native-born
- Construction laborers: 65 percent native-born
- Janitors: 73 percent native-born

Again, there are no jobs Americans won't do. There are only wages and working conditions they are not willing to accept for the work. Nor should they. By refusing to offer higher wages or conditions to entice Americans to come to work for them, employers create a mirage of a labor "shortage" and point to importing foreign workers as the only solution. Circling back to supply and demand, employers want to flood the market with labor supply to drive down wages. Through legal immigration, temporary guest worker programs, and illegal alien labor, many employers accomplish this goal. In a truly free market economy, this phenomenon would not be possible and employers would have to adapt or risk going out of business. As the Center previously put it, "In fact, a tight labor market is the rare uplift program that does not require any new taxes or regulations. It naturally incentivizes employers to raise wages, improve working conditions, and recruit from marginalized groups."²³

The Center's observation on this issue is hardly unique. Lawrence Mishel of the Economic Policy Institute put it this way: "At what wage? That's the question. Will employers start to make job conditions better to attract more workers? If they're not doing that, then they're not facing much of a shortage." Similarly, former Secretary of Labor Robert Reich has said, "It should be noted that the term 'labor shortage' rarely means that workers cannot be found at any price. Its real meaning is that desired workers cannot be found at the price that employers and customers wish to pay." Or how about Jared Bernstein, former chief economic advisor to then-Vice President Biden saying "Employers are very quick to raise the specter of a labor shortage, but often it's another way of saying they can't find the workers they want at the price they're

paying... they are unwilling to meet the price signal the market is sending, so they seek help in the form of a spigot like immigration.”

Due to mass legal immigration, Pew reports that the real wages of non-college educated Americans have stagnated or declined over the past 40 years.²⁴ It took a decade for wages of hourly workers to return to pre-Great Recession levels.²⁵ The economic effects of Covid-19 related shutdowns disproportionately crippled lower skilled Americans. It is not unreasonable to wonder if these marginalized Americans will ever recover with government policies that flood the labor market with cheap foreign labor to compete against.

Guest-worker Programs Inherently Harmful to American Workers

In addition to permanent immigration impacting American workers, there is an alphabet soup of temporary worker programs that add roughly 700,000 additional cheap foreign workers into the labor pool per year. Among them is the H-2B temporary low-skilled, non-agriculture program with a statutory cap of 66,000 foreign workers per fiscal year. Nominally, the law requires an employer to demonstrate an inability to find American workers before they can petition for H-2Bs. In practice, businesses have developed creative approaches to avoid finding qualified Americans and the Department of Labor generally rubberstamps the Temporary Labor Certification (TLC), a prerequisite to obtaining H-2B workers. These foreign workers are yet another form of direct competition that harms marginalized American workers. Yet, Homeland Security Secretary Mayorkas recently announced an additional 22,000 H-2Bs would be available beyond the statutory cap for the remainder of the fiscal year, relying on authority delegated by Congress. This decision was made at the behest of business interests at a time when roughly 19 million Americans were still collecting unemployment benefits.²⁶

The H-1B temporary worker program functions to harm and suppress the wages of college educated or white collar Americans, especially in the science, technology, engineering, and mathematics (STEM) fields. Unlike H-2Bs, there is no requirement that most employers show they unsuccessfully tried to recruit Americans first. The lone exception is for “H-1B dependent employers” or those who have a large amount of H-1Bs within their workforce. But because of a lobbyist driven loophole in the law, “H-1B dependent employers” can bypass the American recruitment requirement, i.e., not even try to recruit Americans, if they pay a salary of at least \$60,000. While at USCIS, I learned that 99 percent of H-1B dependent employers avoid the American recruitment requirement through the salary loophole, with most paying exactly \$60,000 salaries. As Chairwoman Lofgren knows, a \$60,000 salary does not go very far in Silicon Valley.

The media and immigration advocates often frame the H-1B as reserved for the “best and brightest” and “high wage earners”, but this is inaccurate. The 85,000 cap subject H-1Bs are currently awarded by a lottery with most of them going to foreign workers at the two lowest—out of four—prevailing wage levels. Those wage levels are also artificially low, further making H-1B workers an attractive, low cost alternative for employers. Currently, the four prevailing wage levels are the 17th, 34th, 50th, and 67th percentile within a given occupation and geography. If H-1Bs are truly the “best and brightest”, they should be paid competitive wages not entry level wages. The Trump administration issued regulations that would replace the lottery with a merit

based selection process and increase the prevailing wage levels, but both have been delayed by the Biden administration. Any pro-American worker administration should support those reforms, regardless of political party.

Optional Practical Training (OPT) is the largest guest worker program never passed by Congress. Designed by the Bush administration to circumvent the H-1B cap and further expanded by the Obama administration, OPT has no statutory basis but allows over 100,000 aliens admitted as foreign students to work for one-to-three years after graduation. Continuing the fiction that these aliens are “students”, they are exempt from payroll taxes making them at least 10-15 percent cheaper than a comparable American. Unsurprisingly, recent college graduates struggle to land that first job, a critical step in building a career and having the ability to payoff substantial student loan debt.

The Trump Years and Legal Immigration

Among the many criticisms from advocates of unlimited immigration about President Trump was that his administration allegedly erected an invisible wall around the legal immigration system. The implication being that policies and guidance were put in place to arbitrarily and impermissibly deny immigration benefits for otherwise eligible aliens. Again, the data refute this allegation.

Between Fiscal Years 2001 and 2019 (the most recently available year), the United States has issued over 1 million green cards per year each year except for three years. None of those sub-one-million LPR years occurred during the Trump administration.²⁷ In Fiscal Years 2003 and 2004, during the “immigrant friendly” George W. Bush presidency, the United States issued 703,542 and 957,883 green cards respectively.²⁸ In Fiscal Year 2013, during the Obama-Biden administration, the U.S. issued 990,553 green cards.²⁹ Between Fiscal Years 2017 and 2019, during the Trump administration, the U.S. issued 1,127,167; 1,096,611; and 1,031,765 green cards respectively.³⁰ DHS has not made Fiscal Year 2020 data available but it is estimated to be an obvious outlier (very low numbers) given the Covid-19 global pandemic.

Naturalizations, the most meaningful immigration benefit the United States offers, also remained high during the Trump administration. In Fiscal Year 2018, 761,901 immigrants became naturalized U.S. citizens, marking a five year high.³¹ In Fiscal Year 2019, the most recent year’s data available and the last pre-Covid-19 year, 843,593 immigrants naturalized, the highest number since Fiscal Year 2008.³²

Not only were approvals for adjustment of status (LPR) and naturalization during the Trump administration consistent with the levels of recent past administrations, denials for these benefits remained low. In the first quarter of Fiscal Year 2021 (October 1 to December 31, 2020), the last full quarter of the Trump administration, USCIS approved 110,934 adjustment of status applications compared to just 13,874 denials.³³ During the same period, USCIS approved 137,818 applications for naturalization compared to just 15,096 denials.³⁴

Conclusion

The United States has a generous legal immigration system, admitting more immigrants per year with a path to citizenship than the rest of the world combined. Perhaps it has been too generous, to the detriment of certain American workers. Real wages for marginalized Americans have not increased since the 1965 Immigration Act. The economic gains of mass immigration have accrued in the owners of capital, not workers. This amplifies income inequality, an issue many in Congress profess to be concerned with addressing. The behavior of businesses in the political sphere further shows that immigration is a tool to keep wages low. If that wasn't the case, it is doubtful they would vocally lobby Congress for increased immigration and amnesty without first raising wages and improving labor conditions. Our nation is at a critical juncture as we try to rebuild a once booming economy that was decimated by the government mandated shutdowns to stop the spread of Covid-19. This is an opportunity to ensure that no American worker is left behind in the recovery.

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- ¹ See <https://cis.org/Richwine/Abundance-New-Academic-Studies-Find-Negative-Impacts-Immigration>.
- ² Department of Homeland Security, *2019 Yearbook of Immigration Statistics*, Table 1 (Persons Obtaining Lawful Permanent Resident Status: Fiscal Years 1820 to 2019), available at <https://www.dhs.gov/immigration-statistics/yearbook/2019/table1>.
- ³ See INA 201, 203.
- ⁴ INA 203(a)-(b).
- ⁵ INA 203(c).
- ⁶ INA 201(c).
- ⁷ INA 203(a).
- ⁸ INA 201(b)(2)(A)(i).
- ⁹ INA 201(d).
- ¹⁰ INA 203(b).
- ¹¹ INA 203(b)(3).
- ¹² *Id.*
- ¹³ INA 203(b)(5).
- ¹⁴ See <https://cis.org/Report/Immigrants-United-States-2015> (analyzing American Community Survey, Census Bureau data).
- ¹⁵ *Id.*
- ¹⁶ See Figure 3, <https://cis.org/Report/Immigrant-Population-Growth-Slows>.
- ¹⁷ See U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*, September 1997.
- ¹⁸ *Id.*
- ¹⁹ National Academies of Sciences, *The Economic and Fiscal Consequences of Immigration*, at p. 189, p. 168, available at <https://www.nap.edu/read/23550/chapter/1#xi>.
- ²⁰ See <https://www.nationalreview.com/2016/09/united-states-immigration-policy-economic-fiscal-impact-education-native-born/>
- ²¹ See <https://www.c-span.org/video/?c4687727/user-clip-nadler-free-market> and <https://www.c-span.org/video/?c4687725/user-clip-nadler-slave-labor>.
- ²² <https://cis.org/Report/There-Are-No-Jobs-Americans-Wont-Do>.
- ²³ <https://cis.org/Report/There-No-Labor-Shortage>.
- ²⁴ See Drew DeSilver, "For Most U.S. Workers, Real Wages Have Barely Budged in Decades", Pew, Aug. 7, 2018.
- ²⁵ See <https://www.cnn.com/2017/07/13/a-decade-after-great-recession-1-in-3-americans-still-havent-recovered.html>.
- ²⁶ See <https://cis.org/Law/Biden-Administration-Continues-Admit-Cheap-Foreign-Workers>.
- ²⁷ Department of Homeland Security, *2019 Yearbook of Immigration Statistics*, Table 1 (Persons Obtaining Lawful Permanent Resident Status: Fiscal Years 1820 to 2019), available at <https://www.dhs.gov/immigration-statistics/yearbook/2019/table1>.
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ Department of Homeland Security, *2019 Yearbook of Immigration Statistics*, Table 20 (Petitions for Naturalizations Filed, Persons Naturalized, and Petitions for Naturalizations Denied: Fiscal Years 1907 to 2019), available at <https://www.dhs.gov/immigration-statistics/yearbook/2019/table20>.
- ³² *Id.*
- ³³ U.S. Citizenship and Immigration Services, Number of I-485 Applications to Register Permanent Residence or Adjust Status, Oct. 1, 2020 to Dec. 31, 2020, available at https://www.uscis.gov/sites/default/files/document/reports/I485_performancedata_fy2021_qtr1.pdf
- ³⁴ U.S. Citizenship and Immigration Services, Number of N-400, Application for Naturalization, Oct. 1, 2020 to Dec. 31, 2020, available at https://www.uscis.gov/sites/default/files/document/reports/N400_performancedata_fy2021_qtr1.pdf.